

**PROJECT ENTITY PROCUREMENT MODIFICATIONS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

House Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill amends provisions related to the procurement practices of project entities.

**Highlighted Provisions:**

This bill:

- defines terms; and
- requires project entities to:
  - adopt provisions related to procurement; and
  - comply with provisions of the Utah Procurement Code.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**11-13-316**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 7

**11-13-603**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 7

**63G-6a-103**, as last amended by Laws of Utah 2021, Chapters 179, 344, and 345

**ENACTS:**

**63G-6a-107.5**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **11-13-316** is amended to read:

**11-13-316. Project entity oversight.**

(1) Notwithstanding any other provision of law, a project entity is a political subdivision that:

(a) pursuant to Utah Constitution, Article VI, Section 33, is subject to the authority of the legislative auditor to conduct audits of any funds, functions, and accounts in any political subdivision of this state; and

(b) is subject to the requirement to provide the Office of the Legislative Auditor General with all records, documents, and reports necessary for the legislative auditor general or the office to fulfill the duties described in Subsection (1)(a).

(2) Subsection (1) takes precedence over Section [36-12-15](#).

(3) A project entity shall comply with Title 63G, Chapter 6a, Utah Procurement Code, except where, in accordance with Subsection (4), the governing board of a project entity unanimously agrees and adopts policies for procurement that enable the project entity to efficiently fulfill the project entity's responsibilities under the project entity's organization agreement.

(4) (a) If the governing board of a project entity adopts policies for procurement under Subsection (3), the adopted policies shall comply with:

(i) the purposes and policies described in Section [63G-6a-102](#); and

(ii) Title 63G, Chapter 6a, Part 10, Preferences.

(b) If a project entity does not adopt policies for procurement under Subsection (3), then for purposes of Title 63G, Chapter 6a, Utah Procurement Code:

(i) the project entity is a procurement unit, as defined in Section [63G-6a-103](#); and

(ii) the governing board is a procurement official, as defined in Section [63G-6a-103](#).

Section 2. Section **11-13-603** is amended to read:

**11-13-603. Taxed interlocal entity.**

(1) Except for purposes of an audit, examination, or review by the Office of the Legislative Auditor General as described in Subsection (8) and notwithstanding any other provision of law:

(a) the use of an asset by a taxed interlocal entity does not constitute the use of a public

59 asset;

60 (b) a taxed interlocal entity's use of an asset that was a public asset before the taxed  
61 interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public  
62 asset;

63 (c) an official of a project entity is not a public treasurer; and

64 (d) a taxed interlocal entity's governing board shall determine and direct the use of an  
65 asset by the taxed interlocal entity.

66 (2) A taxed interlocal entity that is not a project entity is not subject to the provisions  
67 of Title 63G, Chapter 6a, Utah Procurement Code.

68 (3) (a) A taxed interlocal entity is not a participating local entity as defined in Section  
69 67-3-12.

70 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall  
71 provide:

72 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal  
73 year and the prior fiscal year, including:

74 (A) the taxed interlocal entity's statement of net position as of the end of the fiscal year  
75 and the prior fiscal year, and the related statements of revenues and expenses and of cash flows  
76 for the fiscal year; or

77 (B) financial statements that are equivalent to the financial statements described in  
78 Subsection (3)(b)(i)(A) and, at the time the financial statements were created, were in  
79 compliance with generally accepted accounting principles that are applicable to taxed interlocal  
80 entities; and

81 (ii) the accompanying auditor's report and management's discussion and analysis with  
82 respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal  
83 year.

84 (c) The taxed interlocal entity shall provide the information described in Subsection  
85 (3)(b) within a reasonable time after the taxed interlocal entity's independent auditor delivers to  
86 the taxed interlocal entity's governing board the auditor's report with respect to the financial  
87 statements for and as of the end of the fiscal year.

88 (d) Notwithstanding Subsections (3)(b) and (c) or a taxed interlocal entity's compliance  
89 with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

(i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of Finance; and

(ii) the information described in Subsection (3)(b)(i) or (ii) does not constitute public financial information as defined in Section 67-3-12.

(4) (a) A taxed interlocal entity's governing board is not a governing board as defined in Section 51-2a-102.

(b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

(5) Notwithstanding any other provision of law, a taxed interlocal entity is not subject to the following provisions:

(a) Part 4, Governance;

(b) Part 5, Fiscal Procedures for Interlocal Entities;

(c) Subsection 11-13-204(1)(a)(i) or (ii)(J);

(d) Subsection 11-13-206(1)(f);

(e) Subsection 11-13-218(5)(a);

(f) Section 11-13-225;

(g) Section 11-13-226; or

(h) Section 53-2a-605.

(6) (a) In addition to having the powers described in Subsection 11-13-204(1)(a)(ii), a taxed interlocal entity may, for the regulation of the entity's affairs and conduct of its business, adopt, amend, or repeal bylaws, policies, or procedures.

(b) Nothing in Part 4, Governance, or Part 5, Fiscal Procedures for Interlocal Entities, may be construed to limit the power or authority of a taxed interlocal entity.

(7) (a) A governmental law enacted after May 12, 2015, and on or before November 10, 2021, is not applicable to, is not binding upon, and does not have effect on a taxed interlocal entity that is a project entity unless the governmental law expressly states the section of governmental law to be applicable to and binding upon the taxed interlocal entity with the following words: "[Applicable section or subsection number] constitutes an exception to Subsection 11-13-603(7)(a) and is applicable to and binding upon a taxed interlocal entity."

(b) A governmental law enacted after May 12, 2015, is not applicable to, is not binding

upon, and does not have effect on a taxed interlocal entity that is an energy services interlocal entity unless the governmental law expressly states the section of governmental law to be applicable to and binding upon the energy services interlocal entity with the following words:

"[Applicable section or subsection number] constitutes an exception to Subsection 11-13-603(7)(a) and is applicable to and binding upon an energy services interlocal entity."

(c) Sections 11-13-601 through 11-13-608 constitute an exception to Subsections (7)(a) and (7)(b) and are applicable to and binding upon a taxed interlocal entity.

(8) (a) Notwithstanding any other provision of law, a taxed interlocal entity that is a project entity is a political subdivision that:

(i) pursuant to Utah Constitution, Article VI, Section 33, is subject to the authority of the legislative auditor to conduct audits of any funds, functions, and accounts in any political subdivision of this state; and

(ii) is subject to the requirement to provide the Office of the Legislative Auditor General with all records, documents, and reports necessary of the legislative auditor general or the office to fulfill the duties described in Subsection (8)(a)(i).

(b) Subsection (8)(a) takes precedence over Section 36-12-15.

Section 3. Section 63G-6a-103 is amended to read:

**63G-6a-103. Definitions.**

As used in this chapter:

(1) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.

(2) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(3) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(4) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(5) "Bidding process" means the procurement process described in Part 6, Bidding.

(6) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(7) "Building board" means the State Building Board, created in Section 63A-5b-201.

(8) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(9) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(10) "Chief procurement officer" means the individual appointed under Section 63A-2-102.

(11) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except the process relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and

(vi) contract administration.

(12) "Conservation district" means the same as that term is defined in Section 17D-3-102.

(13) "Construction project":

(a) means a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(14) "Construction manager/general contractor":

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

(b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

(15) "Construction subcontractor":

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;

(b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.

(16) "Contract" means an agreement for a procurement.

(17) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(18) "Contractor" means a person who is awarded a contract with a procurement unit.

(19) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(20) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

(22) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(23) "Days" means calendar days, unless expressly provided otherwise.

(24) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(25) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or

(c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

(26) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

(27) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102;

(c) master planning and programming services; or



(d) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.

(28) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(29) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(30) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board or a charter school;

(c) the Utah Schools for the Deaf and the Blind;

(d) the Utah Education and Telehealth Network;

(e) an institution of higher education of the state described in Section 53B-1-102; or

(f) the State Board of Education.

(31) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(32) (a) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

(b) "Executive branch procurement unit" does not include the Colorado River Authority of Utah as provided in Section 63M-14-210.

(33) "Facilities division" means the Division of Facilities Construction and Management, created in Section 63A-5b-301.

(34) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(35) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(36) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(37) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the procurement official reasonably considers to be immaterial.

(38) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(39) "Independent procurement unit" means:

(a) (i) a legislative procurement unit;

(ii) a judicial branch procurement unit;

(iii) an educational procurement unit;

(iv) a local government procurement unit;

(v) a conservation district;

- 307 (vi) a local building authority;  
308 (vii) a local district;  
309 (viii) a public corporation;  
310 (ix) a special service district; or  
311 (x) the Utah Communications Authority, established in Section 63H-7a-201;  
312 (b) the building board or the facilities division, but only to the extent of the  
313 procurement authority provided under Title 63A, Chapter 5b, Administration of State  
314 Facilities;  
315 (c) the attorney general, but only to the extent of the procurement authority provided  
316 under Title 67, Chapter 5, Attorney General;  
317 (d) the Department of Transportation, but only to the extent of the procurement  
318 authority provided under Title 72, Transportation Code; or  
319 (e) any other executive branch department, division, office, or entity that has statutory  
320 procurement authority outside this chapter, but only to the extent of that statutory procurement  
321 authority.
- 322 (40) "Invitation for bids":  
323 (a) means a document used to solicit:  
324 (i) bids to provide a procurement item to a procurement unit; or  
325 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and  
326 (b) includes all documents attached to or incorporated by reference in a document  
327 described in Subsection (40)(a).
- 328 (41) "Issuing procurement unit" means a procurement unit that:  
329 (a) reviews a solicitation to verify that it is in proper form;  
330 (b) causes the notice of a solicitation to be published; and  
331 (c) negotiates and approves the terms and conditions of a contract.
- 332 (42) "Judicial procurement unit" means:  
333 (a) the Utah Supreme Court;  
334 (b) the Utah Court of Appeals;  
335 (c) the Judicial Council;  
336 (d) a state judicial district; or  
337 (e) an office, committee, subcommittee, or other organization within the state judicial

branch.

(43) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(44) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of the Legislature, the Senate, or the House of Representatives; or

(e) a committee, subcommittee, commission, or other organization:

(i) within the state legislative branch; or

(ii) (A) that is created by statute to advise or make recommendations to the Legislature;

(B) the membership of which includes legislators; and

(C) for which the Office of Legislative Research and General Counsel provides staff support.

(45) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(46) "Local district" means the same as that term is defined in Section 17B-1-102.

(47) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(48) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.

(49) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first

369 year of the contract.

370 (50) "Municipality" means a city, town, or metro township.

371 (51) "Nonadopting local government procurement unit" means:

372 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,  
373 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,  
374 General Provisions Related to Protest or Appeal; and

375 (b) each office or agency of a county or municipality described in Subsection (51)(a).

376 (52) "Offeror" means a person who submits a proposal in response to a request for  
377 proposals.

378 (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference  
379 under the requirements of this chapter.

380 (54) "Procure" means to acquire a procurement item through a procurement.

381 (55) "Procurement" means the acquisition of a procurement item through an  
382 expenditure of public funds, or an agreement to expend public funds, including an acquisition  
383 through a public-private partnership.

384 (56) "Procurement item" means an item of personal property, a technology, a service,  
385 or a construction project.

386 (57) "Procurement official" means:

387 (a) for a procurement unit other than an independent procurement unit, the chief  
388 procurement officer;

389 (b) for a legislative procurement unit, the individual, individuals, or body designated in  
390 a policy adopted by the Legislative Management Committee;

391 (c) for a judicial procurement unit, the Judicial Council or an individual or body  
392 designated by the Judicial Council by rule;

393 (d) for a local government procurement unit:

394 (i) the legislative body of the local government procurement unit; or

395 (ii) an individual or body designated by the local government procurement unit;

396 (e) for a local district, the board of trustees of the local district or the board of trustees'  
397 designee;

398 (f) for a special service district, the governing body of the special service district or the  
399 governing body's designee;

(g) for a local building authority, the board of directors of the local building authority or the board of directors' designee;

(h) for a conservation district, the board of supervisors of the conservation district or the board of supervisors' designee;

(i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;

(j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;

(l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education or the president's designee;

(m) for the State Board of Education, the State Board of Education or the State Board of Education's designee;

(n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of the Commissioner of Higher Education;

(o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or the executive director's designee; or

(p) (i) for the building board, and only to the extent of procurement activities of the building board as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building board or the director's designee;

(ii) for the facilities division, and only to the extent of procurement activities of the facilities division as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the facilities division or the director's designee;

(iii) for the attorney general, and only to the extent of procurement activities of the attorney general as an independent procurement unit under the procurement authority provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's designee;

(iv) for the Department of Transportation created in Section 72-1-201, and only to the extent of procurement activities of the Department of Transportation as an independent procurement unit under the procurement authority provided under Title 72, Transportation Code, the executive director of the Department of Transportation or the executive director's designee; or

(v) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the chief executive officer's designee.

(58) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) the Utah Communications Authority, established in Section 63H-7a-201;

(vi) a local government procurement unit;

(vii) a local district;

(viii) a special service district;

(ix) a local building authority;

(x) a conservation district;

(xi) a public corporation; and

(xii) a project entity, as that term is defined in Section 11-13-301; and

(b) except for a project entity, as described in Subsection (58)(a), does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(59) "Professional service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:

(a) accounting;

(b) administrative law judge service;

- (c) architecture;
- (d) construction design and management;
- (e) engineering;
- (f) financial services;
- (g) information technology;
- (h) the law;
- (i) medicine;
- (j) psychiatry; or
- (k) underwriting.

(60) "Protest officer" means:

(a) for the division or an independent procurement unit:

- (i) the procurement official;
- (ii) the procurement official's designee who is an employee of the procurement unit; or
- (iii) a person designated by rule made by the rulemaking authority; or

(b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

(61) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).

(62) "Public entity" means the state or any other government entity within the state that expends public funds.

(63) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(64) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(65) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(66) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.



(67) "Qualified vendor" means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

(68) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(69) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(70) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

(71) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

(72) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(73) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(74) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(75) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(76) "Rule" includes a policy or regulation adopted by the rulemaking authority, if

adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions that govern the applicable procurement unit.

(77) "Rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the facilities division, the building board;

(B) for the Office of the Attorney General, the attorney general;

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(D) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, the governing authority of the department, division, office, or entity; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the governing body of the local government unit; or

(ii) an individual or body designated by the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the Utah Board of Higher Education;

(g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of Education;

(h) for a public transit district, the chief executive of the public transit district;

(i) for a local district other than a public transit district or for a special service district, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(i) with respect to a subject addressed by board rules; or

(ii) that are in addition to board rules;

(j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah Board of Higher Education;

- (k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and Institutional Trust Fund Board of Trustees;
- (m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority board, created in Section 63H-7a-203; or
- (n) for any other procurement unit, the board.
- (78) "Service":
- (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
- (b) includes a professional service; and
- (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- (79) "Small purchase process" means the procurement process described in Section 63G-6a-506.
- (80) "Sole source contract" means a contract resulting from a sole source procurement.
- (81) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.
- (82) "Solicitation" means an invitation for bids, request for proposals, or request for statement of qualifications.
- (83) "Solicitation response" means:
- (a) a bid submitted in response to an invitation for bids;
- (b) a proposal submitted in response to a request for proposals; or
- (c) a statement of qualifications submitted in response to a request for statement of qualifications.
- (84) "Special service district" means the same as that term is defined in Section 17D-1-102.
- (85) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

(86) "Standard procurement process" means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

(87) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(88) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(89) "Subcontractor":

(a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.

(90) "Technology" means the same as "information technology," as defined in Section 63A-16-102.

(91) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

(92) "Time and materials contract" means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(93) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that

617 procurement item; or  
618 (ii) from an existing type of procurement item to another type;  
619 (b) includes:  
620 (i) training costs;  
621 (ii) conversion costs;  
622 (iii) compatibility costs;  
623 (iv) costs associated with system downtime;  
624 (v) disruption of service costs;  
625 (vi) staff time necessary to implement the change;  
626 (vii) installation costs; and  
627 (viii) ancillary software, hardware, equipment, or construction costs; and  
628 (c) does not include:  
629 (i) the costs of preparing for or engaging in a procurement process; or  
630 (ii) contract negotiation or drafting costs.

631 (94) "Vendor":  
632 (a) means a person who is seeking to enter into a contract with a procurement unit to  
633 provide a procurement item; and  
634 (b) includes:  
635 (i) a bidder;  
636 (ii) an offeror;  
637 (iii) an approved vendor;  
638 (iv) a design professional; and  
639 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

640 Section 4. Section **63G-6a-107.5** is enacted to read:

641 **63G-6a-107.5. Application of chapter to project entities.**

642 (1) As used in this Section, "project entity" means the same as that term is defined in  
643 Section [11-13-103](#).

644 (2) This chapter applies to a project entity as described in Subsections [11-13-316\(3\)](#)  
645 and (4).

646 (3) Notwithstanding Subsection (2), a project entity is subject to and shall comply with:

647 (a) Part 10, Preferences;

- 648            (b) the policies described in Section [63G-6a-102](#); and  
649            (c) any rules that the project entity adopts under this chapter.